

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on February 20, 2003
at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 419, 2/17/2003; SB 420,
2/17/2003; SB 421, 2/17/2003; SB
434, 2/18/2003
Executive Action: SB 363; SB 373; SB 389; SB 394; SB
397; SB 419; SB 420; SB 421; SB 434

HEARING ON SB 419

Sponsor: Sen. Walter McNutt, SD 50, Sidney.

Proponents: Greg Van Horssen, State Farm Insurance Company
Lee LeVeque, President, Cascade County
Bar Association

Opponents: Al Smith, Montana Trial Lawyers' Association

Opening Statement by Sponsor:

SEN. McNUTT explained the purpose of SB 419 is to keep litigation costs down. This bill will cap the amount a party to a lawsuit must pay when it seeks to depose the other side's witnesses.

Proponents' Testimony:

Greg Van Horssen, representing State Farm Insurance Company, believes this bill will have a noticeable impact on litigation costs. Very generally, in any litigation process, there are three very broad categories of witnesses. These categories would include eye witnesses, professionals such as a treating physician, and then identified expert witnesses. SB 419 addresses primarily the professional witness. These persons often have critical information which must be discovered in the interests of justice, and this is the category which is most often abused. In many cases, insurance coverage exists for the defendant. Therefore, it is the insurance company that will pay for defense and costs of litigation. State Farm feels placing reasonable limits on these costs will be a small, but important, step in its efforts to control the costs of litigation and insurance premiums. **EXHIBIT(jus38a01).**

Lee LeVeque, President of the Cascade County Bar Association, and a trial lawyer with 20 years' of experience, has tried cases both from the defense and plaintiff standpoint. **Mr. LeVeque** believes this bill should give assistance in reducing the costs of litigation. **Mr. LeVeque** presented a scenario of an automobile accident and how witness costs for a treating physician can escalate. In Great Falls, a physician will charge \$500 an hour or more for deposition or trial testimony. Indeed, this fee will even apply to a portion of an hour. **Mr. LeVeque** testified that there is often a minimum amount of time charged by the doctor. Therefore, trial preparation will incur unconscionable amounts of expenses for medical professionals. The statutory fee for witnesses in Montana is \$10. A physician will not adequately prepare himself for trial for this minimal fee. SB 419 will cap the amount of money these experts can charge for deposition or

trial testimony. Insurance companies are paying hundreds of thousands of dollars state wide for this testimony. Therefore, **Mr. LeVeque** urged the passage of SB 419 to reduce these costs.

Opponents' Testimony:

Al Smith, representing the Montana Trial Lawyers' Association, was assured by **Mr. LeVeque** and **SEN. MCNUTT** that this bill will not affect expert witnesses. It is a burden for physicians to take time out of their practice, and he agrees they should not be allowed to charge exorbitant rates, but is not sure SB 419 is the mechanism needed.

Questions from Committee Members and Responses:

SEN. DANIEL MCGEE asked if physicians can be brought into a trial situation if the case goes all the way to trial.

Mr. LeVeque responded these witnesses can be subpoenaed for trial. Using present rules and paying the standard \$10 witness fees, they are concerned the doctor will be less that willing to be prepared and do a good job. **Mr. LeVeque** believes some members of the medical profession are taking advantage of the situation. In addition, **Mr. LeVeque** believes some of these witnesses charge these rates hoping they will not be called to testify. This is a disservice to the litigants.

SEN. MCGEE explained he was subpoenaed to provide deposition testimony in a boundary dispute case and was paid \$10. He asked **SEN. MCNUTT** if he wanted a base to this as well.

SEN. MCNUTT replied the Committee could do whatever it wants.

SEN. JERRY O'NEIL asked why they could not negotiate with these witnesses using the \$10 fee as a club for them agreeing to a reasonable fee for testimony.

Mr. LeVeque's experience is physicians do not negotiate. In automobile cases in Great Falls, for example, it is the same physicians that are used over and over. **Mr. LeVeque** stated negotiating with a physician is an exercise in futility.

SEN. BRENT CROMLEY summarized the intent of SB 419 as capping the actual amount of dollars paid to the treating physician.

Mr. LeVeque agreed stating he is not sure where the \$250 cap was derived from, but he believes most district court judges would rule \$250 per hour is an appropriate amount of money to

compensate these witnesses. The \$10 fee would still apply to others who are not professionals.

Closing by Sponsor:

SEN. McNUTT cautioned the Committee to notice that this is not just a doctor bill, because it could include contractors, architects, and engineers. The cap will be \$250 an hour or their usual hourly rate.

HEARING ON SB 421

Sponsor: Sen. Duane Grimes, SD 20, Clancy.

Proponents: Don Hargrove, Montana Addictive
Services Providers
Kristi Blazer, Rimrock Foundation
Jean Branscum, Policy Advisor for the
Martz Administration for Health
and Human Services
Peg Shea, Executive Director, Western Montana
Addiction Services
Jim Oppedahl, Montana Board of Crime Control
Mike Ruppert, Boyd Andrew Community Services
Mark Lucich, Juvenile Probation
Mona Jamison, Boyd Andrew Community Services
Bill Slaughter, Director, Department
of Corrections

Roger Curtiss, a Montana Addiction Counselor
Mary Fay, Self

Opponents: Mike Fellows, Chairman, Montanan
Libertarian Party
Alison Counts, Interagency Coordinating Council,
Community of Belgrade

Opening Statement by Sponsor:

SEN. GRIMES opened stating problems with drug and alcohol are spreading. Not only is it spreading, but there are other things to come in it's wake such as club drugs. These club drugs are also instantly addictive. The Drug and Alcohol Task Force seemed to hear the same story across the state from parents and law enforcement officials. It seems that treatment and first responses from parents, when confronted with these issues, are not as strong throughout the state as law enforcement and the judicial system. Money is available through grants for prevention that could be used in addressing this problem. In

addition, many communities are coordinating efforts. In Great Falls, they have judges, law enforcement, and treatment professionals trying to solve this incredible epidemic. The number one recommendation of the Task Force was to create a "drug czar." As discussions on the Task Force continued, and in an attempt to make the bill fiscally neutral and in an effort to utilize the Board of Crime Control, they came up with a proposal to add an office of Drug Control and Substance Abuse Prevention and Treatment. This office will act as a clearing house and central repository for knowledge, and will be able to access funds. This office will be administratively attached to the Board of Crime Control. **SEN. GRIMES** thought there may still be concerns about separation of powers and balance of powers issues between the Attorney General and the Executive Branch.

Proponents' Testimony:

Don Hargrove, representing the Montana Addictive Services Providers, feels this may be the most important bill this session. **Mr. Hargrove** is frustrated with the amount of money spent in Montana to address this problem. **Mr. Hargrove** spoke about a book entitled "Alcohol: Cradle to the Grave" by Eric Newhouse, and submitted an excerpt from that book about the costs of alcohol abuse to the state of Montana. **EXHIBIT(jus38a02)**. The costs of alcohol abuse to the State of Montana is about \$50 million a year. **Mr. Hargrove** believes there needs to be a culture change in Montana. As with the U.S. Military, Montana and the United States as a whole, can make this cultural change through leadership and an understanding that alcohol and drug abuse is not an appropriate or cost-effective lifestyle. **Mr. Hargrove** feels there needs to be a focal point and this leadership position should not be highly visible. Drug abuse supports terrorism and drug smugglers. **Mr. Hargrove** speaks to every group of pages that come to the State Legislature. They have relayed information that if they wanted to get drugs, they can access drugs at school. **Mr. Hargrove** closed by stating the potential is here to get some really great programs going in the state of Montana.

(Tape : 1; Side : B)

Kristi Blazer, representing Rimrock Foundation, is very concerned with the parallel development of chemical dependency treatment by corrections. This treatment does not meet the same standards as the 27 state-approved programs that provide treatment. **Ms. Blazer** sees the impact of SB 421 as being a meaningful coordination of resources which will result in an extension and integration of resources. **Ms. Blazer** stated it goes without saying that methamphetamine addiction is taxing on all state

resources available for treatment and other matters as well. This new office, as noted by **Mr. Hargrove** will provide a focal point to deal with the methamphetamine epidemic. Ms. Blazer commended **CHAIRMAN GRIMES** and the other members of the Task Force on their work. The creation of a drug czar was the number one recommendation of the Task Force, and SB 421 is a parallel type of development which meets the same ideas of the Task Force.

Jean Branscum, Policy Advisor for the Martz Administration for Health and Human Services, submitted written testimony in support of SB 421. **EXHIBIT(jus38a03)**.

Peg Shea, Executive Director of Western Montana Addiction Services, gave a brief slice of her function in the community. She serves five counties, working with county attorneys, city attorneys, public defenders, municipal court, justice court, district court, youth court officers, drug court, adult probation and parole, misdemeanor supervision officers, adolescent parole, pre-release center, eight school districts and their employees, many child and service workers, adult protection services, case managers, economic assistance case managers, food stamp and medicaid eligibility technicians, Division of Vocational Rehabilitation, mental health therapists and case managers, pediatricians and other physicians, psychiatrists, emergency room personnel, police and sheriff departments, City-County Health Department, visiting nurse services, homeless shelters, housing problems, and emergency disaster services in counties. Coordinating all these services is very difficult and they need state government to do the same. There needs to be similar coordination, integration, and discussion on the state level.

Jim Oppedahl, Executive Director, Montana Board of Crime Control, testified that the Board supports SB 421 conceptually. The Board, however, does not want to expand to 23 members from its current level of 18. **Mr. Oppedahl** feels 23 is a very large group and it makes it difficult to coordinate board activities. Therefore, the Board is asking the bill to be amended, adding only 2 additional members for a total of 20 members.

Mike Ruppert, CEO of Boyd Andrew Community Services, supports SB 421 and complimented **CHAIRMAN GRIMES** on his leadership in dealing with these issues. **Mr. Ruppert** does not typically believe that money will solve problems. In this instance, he feels adding this bit of new government will solve problems. He stated Montana is desperate for neutral leadership that does not have a competing agenda regarding funding for chemical dependency. **Mr. Ruppert** believes SB 421 will take care of the huge problem we are experiencing.

Mark Lucich, representing Juvenile Probation, finds it interesting that over the years every program developed has collapsed. **Mr. Lucich** feels SB 421 is the foundation for the blueprint designed by the Task Force and urged the Committee to support the bill.

Mona Jamison, representing Boyd Andrew Community Services, commented that this session has been major in terms of being a landmark session in dealing with the issues of chemical dependency. There have been many bills attempting to get the tiger by the tail and serve Montana's citizens better. **Ms. Jamison** believes this office will get the focus and coordination on these issues. As Montana begins to make a cultural statement and shift as to how the state of Montana wants to deal with these issues, this bill is the first step. While it appears at first glance there is an expansion of government, **Ms. Jamison** suggests that over the next two sessions, this bill will serve to consolidate and conserve resources by enabling the coordination and efficiencies this bill can ultimately achieve. Therefore, they feel this is a great idea, now and in the future. Creation of this office will allow Montana to change its cultural response to chemical dependency in terms of providing services.

Bill Slaughter, Director of the Department of Corrections, served on the Board of Crime Control for the past 12 years. The Board of Crime Control has not changed its membership and makeup for the past 12 years. The Board's expertise does relate to drug and alcohol abuse. The Board does agree with SB 421, however, he feels the Board needs a member with a background in treatment and aftercare. **Mr. Slaughter** feels the drug czar idea would support law enforcement. Law enforcement and other individuals who deal with offenders sometimes get a bad rap. **Mr. Slaughter** stated they do care about treatment and education. **Mr. Slaughter** feels the Task Force realizes how important treatment is. The Department of Corrections and law enforcement will be involved in learning and changing the way they do business, and this bill will support that concept.

Roger Curtiss, a Montana Addiction Counselor, a recovering alcoholic and a 1979 graduate of Galen Treatment Center, has been a counselor or a director for the past 23 years at seven different treatment facilities. Currently, he is the president of the National Association of Addiction Professionals (NAADP). **Mr. Curtiss** believes it is crucial that the Montana Legislature hear and understand the nature of the ongoing epidemic of illegal drugs, alcohol, and tobacco on the lives of Montanans. This epidemic impacts all Montana Citizens, communities, and resources. **Mr. Curtiss** believes this new program needs to focus on motivating Montana's youth to reject drugs and substance

abuse, reduce the health, welfare, and crime costs resulting from illegal drugs and alcohol and tobacco use. **Mr. Curtiss** feels adding five members to the Board of Crime Control will make the board too large to function effectively. In addition, he is not quite sure the newly created office would best fit under the Montana Board of Crime Control. He feels this office needs to be in the Governor's Office or the Attorney General's Office and report directly to one of those individuals. **Mr. Curtiss** is in favor of SB 421.

Mary Fay, a private citizen and a newly retired probation and parole officer, was a member of the Drug and Alcohol Task Force, and commended Senator Grimes on his leadership. **Ms. Fay** feels this is a good bill that will provide the state focus in using Montana's scarce resources.

Opponents' Testimony:

Mike Fellows, Chairman of the Montanan Libertarian Party, opposes SB 421, speaking to John Walter's drug czar throwing money down the drain, including \$6 million in Superbowl advertising which Mr. Walter admitted did not work to reduce teen drug use. **Mr. Fellows** stated part of the problem is economic because people can make more money selling drugs than they can working. **Mr. Fellows** reminded the Committee of a Fort Benton family that had to grow marijuana to save the family farm. In addition, **Mr. Fellows** believes if marijuana had been legalized in the 70s, we would not have problems with cocaine and methamphetamine today. **Mr. Fellows** stated the number of kids huffing household products is greater than those abusing cocaine. **Mr. Fellows** feels we should consider legalizing marijuana in an effort to control harder drugs.

Alison Counts, representing the Interagency Coordinating Council, and the Community of Belgrade, works every day with young people who get in trouble using alcohol and other drugs. She opposes this bill because she is concerned with what SB 421 does not do and does not define.

(Tape : 2; Side : A)

Ms. Count feels the Interagency Coordinating Council (ICC) needs stronger power and should have been attached to the Governor's Office. **Ms. Count** feels the ICC was not given enough authority and opportunity. **Ms. Count** knows funding is a concern right now. **Ms. Count** submitted a copy of the original legislation which created the ICC. **EXHIBIT(jus38a04)**. The ICC was referred to many times in the Drug Task Force's report, and she feels SB 421

takes us back to square one. However, **Ms. Count** feels ICC has done some incredible work in developing benchmarks and goals, and she does not want to see those redone. **Ms. Count** would like to see great credence given to the work which has already been done. ICC was already in the process of redefining themselves and developing legislation to rename the council and give it empowerment. **Ms. Count** feels prevention is the one thing that will get Montana to the point that it does not need to spend as much money on treatment. By attaching this to the Board of Crime Control and allocating it to the Attorney General's Office, she gets the overwhelming feeling of justice and she is not sure this is the message we want to send. The overwhelming feeling she was looking for was prevention. **Ms. Count** urged the Committee to tweak the bill to be sure that the focus is in the proper order. **Ms. Count** feels communities need to be included in this process and that adding these members to the Board of Crime Control will make the Board too large. **Ms. Count** thanked **CHAIRMAN GRIMES** for his hard work.

Questions from Committee Members and Responses:

SEN. MIKE WHEAT appreciated **CHAIRMAN GRIMES'** hard work but believes we are falling short, because we will not have the funding to back this up. **SEN. WHEAT** noticed that SB 421 does away with the ICC and read from Exhibit 3 listing the duties of the ICC. **SEN. WHEAT** feels SB 421 is designed to do basically what the ICC was instructed to do, but is simply moving these duties over to the Board of Crime Control. **SEN. WHEAT** asked **CHAIRMAN GRIMES** to respond to his observation.

CHAIRMAN GRIMES stated the duties and goals just read are the same goals outlined in SB 421. The Task Force also wanted to know why the ICC was not working. **CHAIRMAN GRIMES** explained the Task Force summarized Montana does not have a high-profile champion of drug abuse prevention, and the message has been lost, strategies have not been implemented, and political and key leaders have not focused on funding and resources. Without laying any blame on anyone, when the Board of Crime Control was presented with this, they reacted positively. Prevention programs are currently being carried on in both the Governor and Attorney General's Office. The Task Force decided that the most effective place where things are getting done is the Board of Crime Control, largely because that is where the money is. In addition, the ICC did not have the same level of effectiveness. SB 421 will specify one person who will be responsible and they will be connected to funding streams to give them ability to make changes.

SEN. WHEAT asked why the Task Force would attach the drug czar to the Board of Crime Control, as opposed to the Governor's Office or the Attorney General's Office, which would give the position an elevated stance in the community.

CHAIRMAN GRIMES responded the Task Force went back and forth between attaching the position to the Governor's Office or the Attorney General's Office. Finally, they decided to create something akin to the Board of Crime Control. They wanted to be careful not to incur a large fiscal note. Right now, the Board of Crime Control works and it would not have a large fiscal impact. The Board is zealous about solving Montana's problems. Things will get done by attaching the position to this multi-professional group.

SEN. WHEAT does not understand where the funding for this position is going to come from. **CHAIRMAN GRIMES** explained the fiscal note will be forthcoming and there may be funds available within the current resources of the Board of Crime Control.

SEN. WHEAT asked **Mr. Slaughter** where the funding for this position will come from.

Mr. Slaughter responded the Board of Crime Control receives less and less money in Burns' dollars, but feels the position would be a proper use of Burns' money. He further explained, at least for this cycle, there are no funds available to put toward this project.

SEN. WHEAT asked where the money will come from after this cycle.

Mr. Slaughter explained that the Burns money could be used and it does not necessarily have an end date. Some grants end in three or four years.

SEN. WHEAT then asked if it would be easier to get money for this position if it were attached either to the Governor's Office or the Attorney General's Office.

Mr. Slaughter replied given the state of the state, he could not say it would be easier to get funds under the Governor or Attorney General's Office because those are general fund dollars.

SEN. GARY PERRY stated 2-15-225, which establishes the ICC, reads like undertaking an engineering project without a focused project manager. SB 421 appears to establish a focused project manager and asked if that was what they were attempting to accomplish.

CHAIRMAN GRIMES replied the Task Force was looking for a name besides "drug czar" for months and months and thought "project manager" might be more appropriate. That is exactly what the Task Force was trying to do separate from the ICC.

SEN. WHEAT asked **Mr. Slaughter** about the membership of the Board of Crime Control. **Mr. Slaughter** explained, although the people on the Board have changed, the make-up of the board has not changed in 20 years. It is a pretty diverse group of individuals.

SEN. WHEAT asked if **Mr. Slaughter** feels in implementing SB 421 several membership positions should be created to deal with chemical dependency and drug abuse.

Mr. Slaughter stated currently they need someone from treatment, but there have been lots of representatives over the years on the board from all the other areas that are important to attack this problem.

Closing by Sponsor:

CHAIRMAN GRIMES submitted proposed amendment SB042101.asb **EXHIBIT(jus38a05)** and admitted this plan may not work, but in looking at the Board of Crime Control, the members are very impressive and committed, and if there is a chance that we can find funds and help people access resources, this is a worthwhile effort. This bill is as close as the Task Force could get in implementing the number one priority of the Task Force. **CHAIRMAN GRIMES** stated it was a pleasure to chair the Task Force.

HEARING ON SB 434

Sponsor: Sen. Joseph Tropila, SD 24, Great Falls.

Proponents: Dexter Busby, Montana Refining
J. Michael Pichette, Northwestern Energy
Pat Keim, The Burlington Northern
and Santa Fe Railway Company
Gail Ambercrombe, Montana Petroleum Association

Opponents: None.

Opening Statement by Sponsor:

Sen. Joseph Tropila, stated this bill is brought because of incidents in Glacier and Cascade Counties. SB 434 which will extend immunity to private response teams. **SEN. TROPILA**

explained lines 12 through 16 have been placed down on line 26, with one addition, which is a private response team contracted for by the state or political subdivision and/or tribal emergency response authority. This will create immunity for those response teams from third-party claims.

Proponents' Testimony:

Dexter Busby, representing Montana Refining in Great Falls, testified this bill is brought because of a couple of things his company has done for Glacier and Cascade Counties. Mr. Busby explained when the original law was written several years ago, it was envisioned that hazard material response would be done primarily by city and county fire departments and law enforcement. In actuality, when there is a problem with a water borne spill, cities and counties do not have the equipment or trained personnel to deal with these spills. Because of the potential for environmental damage and to protect drinking water, these water-borne spills need to be responded to promptly. Because of other federal laws, his company and other private entities maintain a large supply of spill response equipment and trained personnel. Therefore, the first place cities and counties look for help is private businesses in the area with these capabilities. Private businesses are very willing to help, since they also reside in these communities. He is not saying they are unwilling to respond, but his personnel are very concerned, as is their insurance company, about third-party liability and what may incidentally happen as a result of them aiding the cities and counties.

J. Michael Pichette, representing Northwestern Energy, discussed the concept of this bill with Mr. Busby and included utility emergency response workers in the idea. However, having seen the bill for the first time, he is not convinced Northwestern's utility workers would be covered under the language on line 23. Therefore, they are proposing a conceptual amendment that would include cooperatives and public utilities responding in these situations. **EXHIBIT(jus38a06).**

Pat Keim, Director of Government Affairs, The Burlington Northern and Santa Fe Railway Company (BNSF), supports SB 434. Mr. Keim explained that his company, by virtue of an agreement with the state of Montana, maintains stockpiles of spill response material in Flathead, Hill, Lewis and Clark, Cascade, and Yellowstone Counties. This material is available for emergency response groups in those counties. **Mr. Keim** testified that is their desire to act as a good neighbor and member of the community. It would help them to know that they are not endangering their company by helping.

Gail Ambercrombe, representing the Montana Petroleum Association, testified that oil refineries in Montana maintain very expensive units that can respond to emergency spills. The technology in responding to these types of spills had advanced and this technology is very expensive. There is a risk to the companies that they will be perceived as a deep pocket in the event a lawsuit is filed. **Ms. Ambercrombe** feels SB 434 would go far to help in that situation.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

(Tape : 2; Side : B)

SEN. O'NEIL presented a scenario where BNSF dumped railroad cars into Whitefish Lake and if SB 434 would make the BNSF immune if they did not respond in a timely manner.

SEN. TROPILA responded BNSF would not be immune, but would be immune from a third-party lawsuit and referred the question to **Mr. Keim**.

Mr. Keim stated the incident to which **SEN. O'NEIL** was referring happened in 1988. This would not have changed BNSF's liability in that incident because the incident was created and caused by BNSF and they carried the responsibility. It was partially as a result of that incident that BNSF and the State reached an agreement on the stockpiles. SB 434 would not have changed BNSF's liability. However, if that would have been a truck that had gone into Whitefish Lake, and BNSF would have responded, it would have protected the BNSF from liability alleged by third parties.

SEN. O'NEIL followed up stating BNSF did a good job in responding to the accident he was referring to.

SEN. CROMLEY asked if it was his intent to exclude liability for willful or gross negligence.

SEN. TROPILA responded that is not his intention.

SEN. CROMLEY feels the way SB 434 is worded, it does exclude liability for willful or gross negligence, except for employees, and referred to subsection (f).

SEN. TROPILA explained that **Al Smith** had spoken to him about that and was going to offer an amendment.

Closing by Sponsor:

SEN. TROPILA stated long testimony kills bills and closed the hearing.

HEARING ON SB 420

Sponsor: Sen. Edward Butcher, SD 47, Winifred.

Proponents: Gilda Clancy, on behalf of Gary Marbut, Montana
Shooting Sports Association
Deputy Glen Gillett, Petroleum County
Sheriff's Department

Opponents: Jeff Hagener, Director, Department of Fish,
Wildlife and Parks
Greg Munther, Montana Bow Hunters
Mike McMeekin, Missoula County
Sheriff's Department
Harold Holste, Ravalli Fish
and Wildlife Association
Garth Haugland, Beaverhead County Commissioners
Gary Holmquist, Ravalli County Fish
and Wildlife Association
Susan Campbell Reneau, Self
Cathy McGowen, Montana Sheriffs' and Peace
Officers' Association
Cynthia Kromm, Self
Lee Anderson, Whitefish District Game Warden,
President, Montana Game Warden's Association
Jean Johnson, Executive Director, Montana
Outfitters and Guides Association
Leroy Mehring, Vice President, Skyline Sportsmen
Tony Schoonen, State Lands Coalition,
Public Lands Access Association
Robin Cunningham, Fishing Outfitters of Montana
Paul Vang, Self
A. J. Michnevich, Self
Duane Johnson, Self
Stan Frazier, Helena Hunters
and Anglers Association

Opening Statement by Sponsor:

SEN. BUTCHER opened stating this bill addresses reform in law enforcement. In Montana, they are concerned with fairness and even-handed enforcement of laws, as well as protection of game

animal populations. Law enforcement is best done at the local level with elected sheriffs who have a strong degree of accountability. **SEN. BUTCHER** assured sportsmen that this bill is meant to strengthen, not weaken, hunting sports and to protect Montana's hunting heritage. **SEN. BUTCHER** is a member of the NRA, a competitive shooter, and a strong proponent of the Second Amendment. **SEN. BUTCHER** feels Fish, Wildlife, and Park law enforcement has 69 game wardens stretched across Montana with hundreds of square miles to patrol. These officers use up overtime and comp time and then they need to stop and respond only to emergency situations. **SEN. BUTCHER** stated Game Wardens are very well compensated due to overtime and comp time, and he is not sure the state gets its full money's worth as far as game animal protection and law enforcement. Overtime is also incurred during fire season directing traffic and a few other overlapping and expensive duplications which should really be handled at the local level with local personnel. During hunting and fishing seasons, wardens often take an hour or more in responding to situations because of the vastness of the area. **SEN. BUTCHER** feels they are very dedicated; however, because of the distance involved, they are not as efficient a law enforcement arm as needed in rural areas. There are a number of sheriff personnel that travel the same roads and have a very broad presence. Everyone knows sheriff personnel do not have primary responsibility for wildlife regulations. SB 420 sorts through the roles and duties of the bureaucracy and allows Fish, Wildlife and Parks (FWP) to manage animals. **SEN. BUTCHER** feels this should be the primary responsibility of FWP and law enforcement should be the primary responsibility of the Sheriff's Department. Expansion of rural areas and expanded opportunities for recreation put a lot of stain on local sheriff's departments. The continual presence of deputies becomes a major deterrent for all criminal activities, including game violations. SB 420 also calls for cooperation between biology and other field staff personnel with FWP. This will assure sportsman that this will not be abandoned. Law enforcement will be at hand to deal with violations, and this will reduce the number of violations significantly. Sheriff officers gain respect that game wardens seldom achieve.

SEN. BUTCHER explained this bill had to be carefully drafted since the funding sources for law enforcement within FWP comes from a number of special fund accounts, both at the state and federal levels. The funding vehicle will be a special law enforcement account within FWP. The counties' assumption of this additional responsibility is assured a consistent funding source of 12 percent of FWP's annual budget. This legislation will guarantee an equal entitlement to the counties with flexibility to meet special needs of some jurisdictions. The bill also

protects sheriff's departments and FWP from counties substituting FWP enforcement dollars for county budgeting dollars. This was a primary concern among the Sheriffs.

Hunting counties will be able to select full-time rural resident deputies, and this would be very beneficial to overall law enforcement for the county. In addition, counties can fund seasonal special deputies to address special enforcement needs. Deputies would have specific areas to monitor, but would also have the entire sheriff's department staff as part of their team.

SEN. BUTCHER feels 24/7 law enforcement is fundamental to the entire law enforcement system.

Proponents' Testimony:

Gilda Clancy, testified on behalf of Gary Marbut, representing the Montana Shooting Sports Association (MSSA), supports SB 420 because MSSA has long-standing concerns about the general culture of law enforcement within FWP. The majority of FWP Wardens are decent people, trying to do a difficult job for which they are not overpaid, there seems to be an epidemic problem at FWP with enforcement personnel who tend to write the rules as they go. FWP managers will speak about the very high percentage of enforcement activity that results in convictions and will argue this is evidence of appropriate enforcement conduct. However, a closer examination reveals a lot of FWP enforcement actions where a warden makes a bad call in the field. The FWP hierarchy closes ranks and supports that warden with incredible commitment, virtually ensuring some sort of conviction and generating success rates and, too often, penalizes some otherwise innocent hunter who, at worst, has made a technical mistake. FWP has proven again and again to be fiercely resistant to outside influence and aggressively defensive of its personnel, practices, and self-directed culture. **Ms. Clancy** feels, on the other hand, that if deputy sheriffs are guilty of over zealous or misdirected enforcement practices, Sheriff's can be voted out of office. This is not an available tool to deal with questionable FWP practices. **Ms. Clancy** stated the Committee will need to decide if the technical and financial aspects of this bill can be made to work.

Deputy Glen Gillett, representing the Petroleum County Sheriff's Department, feels this bill would be good for his county since they are always present and do community-orientated policing and have a good relationship with the citizens.

Opponents' Testimony:

Jeff Hagener, Director of the Department of Fish, Wildlife and Parks, submitted written testimony in opposition to SB 420.

EXHIBIT(jus38a07).

(Tape : 3; Side : A)

Greg Munther, representing the Montana Bow Hunters, opposes this bill because he feels law enforcement officers will always have greater priorities than wildlife issues. **Mr. Munther** testified there is a large amount of commercialized poaching in Montana, and feels this issue will take a lot of focused investigation and energy. **Mr. Munther** testified that of all the things that are broken in Montana, FWP is not one of them.

Mike McMeekin, representing Missoula County Sheriff's Department, submitted written testimony in opposition to SB 420.

EXHIBIT(jus38a08).

Harold Holste, representing the Ravalli Fish and Wildlife Association, testified that wildlife hunting and viewing brings millions of dollars into Montana every year. **Mr. Holste** does not want his sportsman dollar invested in reinventing the wheel. FWP has trained personnel and equipment throughout the state. **Mr. Holste** is a retired FWP officer and worked in Ohio and the state of Washington for 31 years and worked closely with other law enforcement agencies. He feels law enforcement will not be able to respond in a timely fashion to problems in the woods. In addition, sheriff's have other mandates and their county jurisdiction would prohibit them from responding to state-wide investigations. **Mr. Holste** suggested drafting legislation allowing a peace officer to enter private property to manage wildlife and enforce regulations. **Mr. Holste** feels strongly that having to obtain permission to go onto property to check a hunter takes away authority from FWP wardens.

Garth Haugland, representing Beaverhead County Commissioners, stated Beaverhead is the largest county in the state with 61 percent of the county being managed by federal and state government. **Mr. Haugland** was a state game warden from 1960 until 1985. Currently, FWP has an excellent training program. **Mr. Haugland** submitted a letter from William Briggs, Beaverhead County Sheriff, in opposition to SB 420. **EXHIBIT(jus38a09)**. **Mr. Haugland** testified they have had difficulty in hiring and keeping deputies in the very rural areas since opportunities for a social life is limited. Both the Beaverhead County Commissioners and the Sheriff oppose SB 420.

Gary Holmquist, representing Ravalli County Fish and Wildlife Association, opposed SB 420 not only because of the fiscal problems and resource problems which were already mentioned, but also asked the Committee to consider that wildlife-based economies in Montana are worth over \$1.7 billion. The hunting industry alone is \$538 million. FWP does a very good job right now. Sheriff departments are strapped fiscally and are in need of equipment and personnel. **Mr. Holmquist** is a professional guide and hunts and fishes in ten counties. In all his years as an outfitter, he has yet to encounter a deputy sheriff in the Bob Marshall Wilderness. He does, however, frequently come into contact with game wardens. **Mr. Holmquist** strongly encouraged the Committee to vote against SB 420.

Susan Campbell Reneau, an author and editor of 18 books on big game hunting and wildlife conservation, including ten books published by the Boone and Crocket Club, and Chairman of the Neighborhood Watch Program in Missoula, feels this is a bill to privatize the management of the wild animals of Montana that belong to the people of Montana. **Ms. Reneau** testified sheriff's departments do not have the ability to manage enforcement of game laws. **Ms. Reneau** testified that the game wardens she knows are very competent and very professional. Wild animals belong to the public, not the private people.

Cathy McGowen, representing the Montana Sheriffs' and Peace Officers' Association, testified they do not believe they are equipped, economically or otherwise, to take on this additional responsibility. They have received many telephone calls from sheriff's offices across the state opposing this bill. **Ms. McGowen** feels sheriff departments and FWP personnel should be able to work out their differences and not attempt to address their problems with legislation.

Cynthia Kromm, submitted written testimony in opposition to SB 420. **EXHIBIT(jus38a10).**

Lee Anderson, a Whitefish District Game Warden and President of the Montana Game Warden's Association, opposed SB 420. **Mr. Anderson** testified Montana game wardens have served the people of Montana preserving the wildlife and parks resources since 1889. Game wardens have worked side by side other law enforcement agencies building positive relationships in order to meet the demands of the public. **Mr. Anderson** does not believe this shift in responsibility will benefit the citizens of Montana and will place an unnecessary burden on the already overloaded shoulders of county enforcement agencies and, in doing so, will put our wildlife resources at risk. This bill will be a disservice to

the county officers of the state, the citizens of the state, and to the wildlife resources of the state.

Jean Johnson, Executive Director of the Montana Outfitters and Guides Association, stated there are roughly 1,200 outfitters on the water and in the mountains in Montana. The Montana Board of Outfitters has two investigators and does not have authority to do anything with people who are not licensed to operate. Through a memorandum of understanding with FWP and \$40,000 they have a force of about 67 game wardens across the field. Ms. Johnson read a letter from Russ Smith, an outfitter in Montana, who took a client who disobeyed his order down to Phillipsburg and had his client put in jail.

Leroy Mehring, Vice President of Skyline Sportsmen in Butte, and speaking for Silver Bow Sheriff Walsh, opposes this bill since game wardens have specialized training, and this will take away jobs from game wardens.

Tony Schoonen, representing the State Lands Coalition and the Public Lands Access Association, rises in opposition to this bill. **Mr. Schoonen** feels that many young wardens have bought homes and started families, and feels we do not need this in Montana.

Robin Cunningham, representing the Fishing Outfitters of Montana, opposes SB 420.

Paul Vang, an outdoor writer from Butte, submitted written testimony in opposition to SB 420. **EXHIBIT(jus38a11)**.

(Tape : 3; Side : B)

A. J. Michnevich, opposes SB 420 which would amend 55 sections of law and repeal five other sections. Game wardens are needed in the field to protect our wildlife and fisheries. **Mr. Michnevich** testified that people can call 1-800-TIPMONTANA to report possible game violations. Information from these calls is then routed to the appropriate game warden. If SB 420 is passed, **Mr. Michnevich** feels these calls will not be investigated.

Duane Johnson, a volunteer with FWP, submitted written testimony in opposition to SB 420. **EXHIBIT(jus38a12)**.

Stan Frazier, representing the Helena Hunters and Anglers Association, asked the Committee to oppose yet another attempt to steal money from FWP.

Questions from Committee Members and Responses:

SEN. CROMLEY stated they heard a lot of testimony from the opponents saying the local sheriff's departments do not have enough resources to handle these duties. **SEN. CROMLEY** wanted to know if there would be any more resources available to enforcing game violations in the state.

SEN. BUTCHER stated there is \$6.4 million a year spent on law enforcement within FWP. This represents \$115,000 per county that could be applied for to handle law enforcement. There needs to be a separation of law enforcement duties and non-law enforcement activities. SB 420 is addressing law enforcement only and game animal management will be handled by field biologists. Funding will be available and the money that comes from FWP will need to be restricted to rural deputies. The reason people in the back country do not see deputies is because at this point that is not part of a deputy's responsibility. **SEN. BUTCHER** stated the Committee should keep in mind the separation of the two responsibilities.

SEN. AUBYN CURTISS asked **SEN. BUTCHER** if it was his intention to terminate the benefits of current game wardens who would no longer have a position with FWP.

SEN. BUTCHER replied that was not his intention. The intention is not to put people out of work. Game Wardens would, if they want to be in law enforcement, go to work for the sheriff's departments. The funding is there and the sheriff's departments are going to need personnel for rural areas. The bill is going to integrate game wardens and sheriff's departments. The benefits would still be part of the state retirement fund.

SEN. CURTISS noticed in Section (7), line 6, game wardens are eliminated from benefits under the language.

SEN. BUTCHER stated they are eliminated but not as individuals, but game wardens, as a position, is gone. The individual can shift into another area under public employees. At that point in time, benefits would still be in the system.

Closing by Sponsor:

SEN. BUTCHER emphasized the separation between enforcement and non-enforcement. More law enforcement is needed in rural areas. Each game warden has approximately 2,109 square miles to enforce. Under the funding mechanism contained in the bill, if a sheriff's department wants to add offices for hunting season, they can do that. This gives the sheriff's department an incredible amount

of flexibility. Some counties may just use special funding to handle seasonal events. Currently, FWP uses special game wardens because they can receive matching funds for certain activities, such as water control. **SEN. BUTCHER** added the TIPMONTANA program would not be affected since it falls within the parameters of game management. **SEN. BUTCHER** feels the \$6.4 million for law enforcement could be spent much more effectively than it currently is and the biology end could be handled more efficiently by FWP. In addition, **SEN. BUTCHER** feels people may have received twisted information about the purpose and intent of the bill, and stated the Committee needs to sort through the bill and see what it addresses and what it does not address.

EXECUTIVE ACTION ON SB 419

Motion: **SEN. PERRY** moved **SB 419 DO PASS.**

Motion: **SEN. WHEAT** proposed a conceptual amendment to the bill because it is obvious what physicians and health care providers are charging for deposition or trial testimony. **SEN. WHEAT** would like to leave the stricken language in section (2) and then beginning on line 22 before the word "must" say "physicians, chiropractors, or other health care providers must be paid their usual hourly rate". **SEN. WHEAT** feels this will make it clear that the bill applies to physicians and health care providers.

Discussion:

SEN. McGEE asked why this is being limited to health care professionals since he is a surveyor and sometimes is deposed.

SEN. WHEAT asked him if he would want his fees capped and feels the bill should be limited to health care professionals. **SEN. WHEAT** clarified his amendment for **SEN. PERRY** stating it will provide a cap on the fees charged by physicians and other health care providers.

SEN. McGEE asked if an expert, an engineer for example, could charge his hourly rate.

SEN. WHEAT replied this would not cap the fee paid to an engineer, and if they were a retained expert, they would still get whatever fee they charged.

SEN. O'NEIL clarified that a crime reconstruction expert or sexual abuse expert would not have their fees capped, but a physician would.

SEN. WHEAT stated that was correct and the testimony indicated the big problem is primarily with physicians.

SEN. O'NEIL asked if, constitutionally, they had to have a logical reason for capping one profession and not others.

Valencia Lane replied if an equal protection analysis was applied, the lowest level of scrutiny would apply and you would not have to meet a compelling state interest test. She does not see a constitutional problem with this proposed amendment.

SEN. PERRY feels that, in order to be fair, the cap needs to be across the board.

SEN. JEFF MANGAN asked **SEN. WHEAT** to explain the three tiers of witnesses and how the amendment will affect one class of witnesses.

SEN. WHEAT explained lay witnesses are fact witnesses such as an eye witness to an accident. The second level of witnesses would include a professional expert witness such as a treating physician. The third level is an expert witness specifically hired to provide expert testimony. This bill will address the second level of witnesses. Based on **SEN. WHEAT's** experience if there is a problem with fees, it is in that second tier and is primarily with physicians and doctors.

Ms. Lane clarified for **SEN. MANGAN** where the proposed amendment would be placed and how it would read.

SEN. O'NEIL asked if the bill would place an surveyor in the category as a lay witness to be compensated \$10 per day.

SEN. WHEAT replied that if a surveyor were a fact witness in a case, he would be entitled to the \$10 a day witness fee. In reality, however, the party on whose behalf he was testifying, would pay the witness whatever his time was worth. Under this proposed amendment, if an attorney representing State Farm wants to depose a doctor, he can tell the physician that he will only pay him \$250 per hour because that is the amount allowed under statute.

Vote: **SEN. WHEAT's** amendment **FAILED** by roll call vote with **Senators Mangan, Pease, and Wheat** voting aye and **CHAIRMAN GRIMES** not voting.

Motion: **SEN. O'NEIL** proposed an amendment reading "An expert is a witness and must be paid the expert's usual hourly rate or a rate

not to exceed the hourly rate of the attorney at called the witness, whichever is less."

Discussion:

SEN. WHEAT did not think the proposed amendment would improve anything.

(Tape : 4; Side : A)

Vote: **SEN. O'NEIL's** proposed amendment **FAILED** with **SEN. O'NEIL** voting aye.

Vote: The motion that **SB 419 DO PASS CARRIED** by roll call vote, with **Senators Cromley, Curtiss, O'Neil, and Wheat** voting no.

EXECUTIVE ACTION ON SB 434

Motion: **SEN. PERRY** moved **SB 434 DO PASS**.

Motion: **SEN. WHEAT** proposed an amendment to SB 434 stating he had discussed the proposed amendment with **SEN. TROPILA**, and he is in agreement.

Discussion:

After further discussion, **Ms. Lane** explained **SEN. WHEAT's** proposed amendment would include changes also proposed by **SEN. CROMLEY** and will amend lines 25 and 26, striking "bad faith" and moving the language in (f) that reads "except for willful misconduct or gross negligence of an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e)" up to line 17. The purpose of this is to apply this language to all entities and not just the employees of the entities. The language beginning on line 16 would now read "The following are not liable, except for willful misconduct or gross negligence of an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), under this part for injuries, costs, damages, expenses . . .". The entities will be those in subsections (a), (b), (c), (d), and (e). Also, on line 23, after "private," insert "emergency" and then on line 24, after "authority" insert "for emergency response activities". **Ms. Lane** explained the reason for this change is so immunity is not granted for actually causing the spill.

SEN. PERRY suggested taking subsection (f) beginning with "except" and moving it to the beginning of the line on 16 so the

amendment would read better. **Ms. Lane** thought that was a good suggestion and **SEN. WHEAT** agreed.

CHAIRMAN GRIMES asked **Ms. Lane** to describe the net effect of the amendment again.

Ms. Lane explained this amendment changes existing law, and the way the bill was written maintains existing law which was not very well written because it exempted the exception phrase "except for willful misconduct, gross negligence, or bad faith," and only applied it to employees, representatives, and agents and did not apply to the entities themselves. The change suggested by **SEN. WHEAT** would clean up existing law regarding the exception, and will grant immunity from liability to the entities and their employees, not just to the employees. The amendment is a clarification and revision of existing law.

SEN. O'NEIL asked if the exclusion applied only to employees or if it applied to all state agencies. **SEN. O'NEIL** wanted to know why the Committee would put emergency response activity in the line with employee and why it does not apply to all.

SEN. WHEAT explained to **SEN. O'NEIL** categories (a) through (d) are state agencies, and category (e) is a private response team.

SEN. O'NEIL asked if the state agencies should be immune for acts they do that are not in response to emergency response activity.

SEN. WHEAT replied he did not think so because the language above talks about liabilities resulting from the release or threatened release, or remedial action resulting from the release or threatened release of hazardous material.

SEN. McGEE directed **SEN. O'NEIL** to look at the title of the bill which deals with "private response teams" in the bill. **SEN. McGEE** assured **SEN. O'NEIL** that the title of the bill would not allow them to go into any of the other sections anyway.

Vote: The amendment as proposed by **SEN. WHEAT** and **SEN. CROMLEY** **CARRIED UNANIMOUSLY**. Note: **Amendment SB043402.av1** was delivered to the Committee Secretary later that day. **EXHIBIT(jus38a13)**.

Motion: **SEN. PERRY** moved **SB 434 DO PASS AS AMENDED**.

Motion: **CHAIRMAN GRIMES** moved the amendment proposed by Mike Pichette, Exhibit 6, **BE ADOPTED**.

Discussion:

Ms. Lane stated her understanding was that when the petroleum industry first started talking about this bill, they discussed it with **Mr. Pichette**, who wanted utilities included. Somehow, that request got lost along the way. When **Ms. Lane** was drafting the bill and working with people from the petroleum industry, she also worked with Bill Gianoulis at the Department of Administration, who was concerned about granting immunity to private companies. Therefore, they crafted the language in the bill to include private companies who contracted to perform what would otherwise be performed by public entities. **Ms. Lane** has asked **Mr. Pichette** to contact Department of Administration attorneys to discuss this. **Ms. Lane** cautioned that if the Committee does adopt this proposed amendment, they should be careful not to grant broad immunity, and make sure immunity applies to private entities that have been requested to perform this activity. It should only apply to companies that are responding at the request of a governmental agency.

CHAIRMAN GRIMES withdrew his motion.

Vote: The motion that **SB 434 BE CONCURRED IN AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON SB 420

Motion: **SEN. MANGAN** moved **SB 420 BE INDEFINITELY POSTPONED**.

Vote: **SEN. MANGAN'S** motion that **SB 420 BE INDEFINITELY POSTPONED CARRIED** with **Senators Cromley** and **O'Neil** voting no.

EXECUTIVE ACTION ON SB 421

Motion: **SEN. GRIMES** moved **SB 421 DO PASS**.

Motion: **SEN. GRIMES** moved **Amendment SB042101.asb BE ADOPTED**.

Discussion:

SEN. GRIMES explained the amendment will encourage the entity to work with local community groups and will give more clarity as to applying for and administering grants. **SEN. GRIMES** also explained that one of the biggest concerns from the Board of Crime Control was concern about adding too many new members. Therefore, the amendment will back the additional number down to two people. In addition, the last instruction will require the two new members to be treatment professionals.

SEN. PERRY stated to the Committee that he supports the amendment, and they address his concerns.

Vote: The motion that **Amendment SB042101.asb BE ADOPTED** carried unanimously.

Motion: **SEN. GRIMES** moved **SB 421 DO PASS AS AMENDED.**

Discussion:

SEN. WHEAT expressed concern about the Interagency Coordinating Council. He feels the duties and purpose of the drug czar under SB 421 is almost identical as what the purpose of the Interagency Coordinating Council were supposed to be. **SEN. WHEAT** likes the idea of attaching the drug czar to the Attorney General's Office or the Governor's Office to give the position a higher profile. **SEN. WHEAT** feels the Legislature needs to recognize there is a serious problem in the state and take a stand. **SEN. WHEAT** is afraid this will not get the kind of attention and push it needs. **SEN. WHEAT** is in favor of passing an amendment to attach the drug czar position to either the Governor's Office or the Attorney General's Office.

SEN. MCGEE responded he spent eight years in the House dealing with Corrections by serving on Sentencing Commissions and so forth. Through this, he has learned that the Board of Crime Control has access to funds not available to the Governor's Office or the Attorney General's Office. There are grants and federal funds that come to the Board of Crime Control. **SEN. MCGEE** feels the Board of Crime Control has always been a leading entity that has brought forth a number of proposed amendments to law. **SEN. MCGEE** agrees it needs to be high profile, but there is no general fund available. Therefore, if the Board of Crime Control cannot fund this position, it just will not get done.

SEN. WHEAT asked Director Slaughter if he had any money and he replied he does not have money to fund this and was not sure where the money would come from the next time around. **SEN. WHEAT** believes strongly in the bill, and feels if the money is not there, the Legislature needs to go get it. **SEN. WHEAT** feels this is a policy decision which needs to be made.

SEN. GRIMES stated the Attorney General did show up for the hearing, not because he does not support it, but there are concerns between the Executive Branch and the Attorney General's Office which are legitimate administrative issues. **SEN. GRIMES** warned about making this position ineffective by putting it in the Attorney General's Office when all the prevention components

are in the Executive, or being in the executive when money and other prevention components are in the Attorney General's Office.

(Tape : 4; Side : B)

SEN. GRIMES feels the Board of Crime Control is committed and this is a good place for this drug czar position. In addition, an interim committee will be assigned the responsibility of coordinating with this position to see how it is working with all community efforts. **SEN. GRIMES** feels **SEN. WHEAT's** instincts are correct, but there are some political realities. He urged **SEN. WHEAT** to resist making any major changes.

SEN. MANGAN asked direction in the bill that attaches the position to the Board of Crime Control. **SEN. GRIMES** directed him to lines 14 and 15 of the bill.

SEN. MANGAN asked if they are assuming they will get grants to pay for both the drug czar and any associated personnel, or whether the funding was going to be absorbed into the current budget of the Board of Crime Control.

SEN. GRIMES responded they had thought there was more money available. This will be prioritized with all other issues before the Board of Crime Control. In addition, **SEN. GRIMES** feels it could be added into HB 2 if the body has the will to do it. Otherwise, it will be funded as money is available from the Board of Crime Control.

SEN. MANGAN stated last session they added the Victim Services Office within the Department of Justice and were able to get grants for funding. **SEN. MANGAN** stated since the bill does not specifically state it is attached to the Board of Crime Control, it could come under the Department of Justice and funded in full through the Board of Crime Control, but not necessarily attached to the Board. He feels it might be better and easier to fund through federal grants through the Board of Crime Control if it is within the Department of Justice.

SEN. GRIMES stated they wrestled this issue and worried they were getting outside the role of the Board of Crime Control because they pass funds through. **SEN. GRIMES** told **SEN. MANGAN** that Mr. Opedahl, from the Board of Crime Control, did not have a problem with the bill as written.

SEN. MANGAN reiterated it would be easier to fund if it were not within the Board of Crime Control.

SEN. GRIMES remarked he would be open to any and all suggestions.

SEN. O'NEIL is frustrated and feels it is ironic that today they are setting up a drug czar and sending him to Washington, D.C., to beg for money. The more money you take from Washington, D.C., the less sovereignty you have. **SEN. O'NEIL** feels this is tragic.

Vote: The motion that **SB 421 DO PASS AS AMENDED** carried with Senator O'Neil voting no.

EXECUTIVE ACTION ON SB 29

Motion: **SEN. O'NEIL** moved **SB 29 BE RECONSIDERED**.

Vote: The motion that **SB 29 BE RECONSIDERED** failed with Sen. O'Neil voting yes.

EXECUTIVE ACTION ON SB 373

Motion: **SEN. PERRY** moved **SB 373 DO PASS**.

Discussion:

SEN. GRIMES feels that other states do this successfully, and he finds that to be a compelling argument.

SEN. WHEAT feels there is a fairness argument, but he believes accreditation is important. If there are other accrediting organizations, the Montana High School Association (MHSA) should be encouraged to allow that type of accreditation. Although he cannot support the bill as it is, **SEN. WHEAT** could support the bill if it were amended to address the fairness issue and sought help from the Committee.

SEN. PERRY responded that upon further research and discussions, he feels it is not a question of whether a school is accredited by a private accrediting agency. The real issue is with Article X, Section 6, of the Constitution. **SEN. PERRY** feels if public schools use their money to pay to belong to the MHSA, and then if the private schools could join without payment, that would violate the Constitution. However, in the preceding paragraph, line 16 specifies upon the payment of dues. This means the private schools are not getting any benefit, but are paying an equal amount as the public schools. Accredited private schools already have the option to join. The issue is with the non-public schools and upon payment of dues, this does not violate the Constitution. Therefore, **SEN. PERRY** supports the bill as presented.

SEN. CURTISS supports the bill because other states have provisions for accreditation which gives flexibility. **SEN.**

CURTISS asked if someone could respond to the accreditation standards of the Association of Non-Public Schools of Montana.

SEN. CROMLEY replied that he had one child that went to Billings Central, an accredited non-public school.

SEN. CURTISS thought it would be interesting to know what those accreditation standards are.

SEN. MANGAN commented there are a number of different types of private accreditation, some good, some bad. **SEN. MANGAN** is concerned about the bill's reference to a private accrediting agency. There are public school standards, but there is nothing in statute that talks about private accrediting agencies. There are different types of accreditation. **SEN. MANGAN** feels this issue is open-ended.

SEN. CURTISS asked if the Committee does not address this gross injustice being done to the children who attend private schools, how else would it get fixed.

SEN. O'NEIL believes it is a civil right issue being denied these children based on their religious ideas. He believes the present system violates Article II, Section 4, of the Montana Constitution.

SEN. MANGAN disagrees with **SEN. O'NEIL** and stated it comes down to the people hired to teach. This has nothing to do with religion, but rather who the schools choose to hire to teach. The hiring of certified teachers has nothing to do with religion. **SEN. MANGAN** feels having certified teachers is a good thing and is not something Montana should stray away from. **SEN. MANGAN's** issue with MHSA is allowing private schools to participate in the regular season, but not in post-season. **SEN. MANGAN** feels this rule should be changed and the private schools should either be all in or all out. **SEN. MANGAN** feels it is a mistake to pass a bill with language that is too broad.

SEN. CROMLEY agreed with most of what **SEN. MANGAN** said and is concerned about unintended consequences and the bill referring to all organizations having jurisdiction over interscholastic activities which could include things like National Honor Society, speech activities, and relationships with colleges.

Motion: **SEN. CROMLEY** moved **SB 373 BE AMENDED** to read on line 14, "school district, as defined in 20-6-701, may not expend public funds for membership in the Montana High School Association unless that organization adopts a policy allowing a non-public school to join an organization" etc.

(Tape : 5; Side : A)

Discussion:

SEN. CROMLEY stated he was probably going to vote against the bill anyway, but he wants to make the bill less broad.

Ms. Lane stated she suspects the bill was drafted the way it was because you cannot have special legislation, and she wanted to specifically bring that to the Committee's attention.

SEN. McGEE agreed and spoke about "boutique legislation" being that which addresses just one little area. General speaking, that is not what the Legislature likes to do.

Vote: **SEN. CROMLEY's** motion that **SB 373 BE AMENDED FAILED** by roll call vote.

Motion: **SEN. MANGAN** moved on line 20, after "private accrediting agency" insert "approved by the Board of Public Education."

Discussion:

SEN. WHEAT liked the amendment and feels it solves some of the problems he has regarding accreditation.

SEN. PERRY asked **SEN. CROMLEY** if the school his child attended in Billings was accredited by the National Catholic Conference.

SEN. CROMLEY stated it may have been but it is also accredited by the state. There are currently eight private schools in Montana accredited by the state.

SEN. PERRY asked if there are also Catholic schools accredited by a national organization that are not accredited by the state.

SEN. PERRY opposes the amendment because he feels it would negate the entire intent of the bill.

SEN. MANGAN respectfully disagreed stating currently a non-public school can be accredited under state accreditation standards.

The issue is with the words "private accrediting agency," which

SEN. MANGAN feels is way too broad and could include a certificate from the Internet. **SEN. MANGAN's** proposed amendment says the board will determine whether that private accrediting agency is an appropriate agency. This bill would require approval of the accrediting agency.

SEN. O'NEIL fails to see what we are gaining for the children by requiring the school be especially accredited. He feels allowing private and public schools to play basketball would help the children. He feels more harm will be done by refusing to let these children associate.

Vote: SEN. MANGAN's motion that **SB 373 BE AMENDED FAILED** by roll call vote.

Vote: SEN. PERRY's motion **SB 373 DO PASS** carried with **Senators Cromley, Mangan, Pease, and Wheat** voting no.

EXECUTIVE ACTION ON SB 389

Motion: SEN. PERRY moved **SB 389 DO PASS**.

Motion: SEN. WHEAT moved **Amendment SB038901.av1 BE ADOPTED**.
EXHIBIT (jus38a14).

Discussion:

SEN. WHEAT explained this is a friendly amendment. The testimony indicated that contractors are looking for notification that there is a problem and the ability to cure the defect. This bill, with **SEN. WHEAT's** proposed amendment, will still accomplish that result. The amendment also includes "contract specifications" or "accepted trade standards." Also, the amendment modifies the definition of "construction professionals" to make it consistent with the definition of "construction defect." Subsection (9) at the bottom of page 2 is stricken because it speaks to unforeseen acts of nature which is usually defined in the insurance policy. The meat of the bill, the new section (2), the word "related" will be struck on line 8. This will make it consistent throughout the bill that they are talking about construction defects. The amendment also provides for inspection "as agreed by the parties."

Instruction 12 addresses the written statement given to the homeowner by the construction professional if the construction professional decides not to proceed with a remedy.

The new subsection (3) dealing with admissibility is stricken by the amendment. **SEN. WHEAT** was not certain what was meant by structural failure, but did not feel it was inclusive of construction defects. **SEN. WHEAT** did, however, feel "construction defects" would include "structural failure." Therefore, the proposed amendment substitutes "construction defect" for "structural failure."

SEN. WHEAT stated **Curt 9Chisholm** did not want subsection (6) to be deleted. This subsection says whatever is in the statute does not supercede any contractual alternative dispute resolution procedures contained in the contract between the parties.

SEN. WHEAT closed by stating the proposed amendment will provide for a notification right, as well as a right to cure, for the contractors.

SEN. McGEE considers this to be a friendly amendment and hopes it receives unanimous support.

SEN. O'NEIL stated the proposed amendment, on page 3, line 8, deletes "until 60 days after the period of time during which the filing of an action is barred," and wondered if that language was picked up somewhere else in the bill.

SEN. WHEAT replied the language is unnecessary because the tolling of a statute of limitations is a legally defined event and if the bill states the statute of limitations for a construction defect is tolled, the court will understand what that means. It means once the notification goes out, the period of time for the statute to run stops until the procedure is either complied with or an action is filed in court.

SEN. PERRY asked if on page 5, section (3) is crossed out because those items are already admissible and, therefore, it is not necessary.

SEN. WHEAT replied that's true and if he is representing a homeowner and the contractor is on the stand, he is going to question the contractor about what he has done. All of this information will come out through examination and cross-examination of witnesses at trial.

SEN. PERRY again asked **SEN. WHEAT** if he was absolutely certain the language was included. **SEN. WHEAT** replied in his opinion, it is.

Vote: SEN. WHEAT's motion that amendment SB038901.av1 BE ADOPTED carried unanimously.

Motion/Vote: SEN. McGEE moved SB 389 DO PASS AS AMENDED. The motion carried unanimously.

(Tape : 5; Side : B)

EXECUTIVE ACTION ON SB 363

Motion: SEN. MCGEE moved SB 363 DO PASS.

Motion: SEN. MCGEE moved the amendment proposed by the sponsor BE ADOPTED. EXHIBIT(jus38a15).

Discussion:

SEN. GRIMES explained the amendment corrects a mathematical error.

Ms. Lane asked for permission to slightly reword the amendment when she drafts the amendment in final form. The Committee agreed to Ms. Lane's request.

Vote: The motion that the Sponsor's proposed amendment BE ADOPTED carried unanimously. **Note:** Amendment SB036301.avl was delivered to the Committee Secretary later that day. EXHIBIT(jus38a16).

Motion: SEN. MCGEE moved SB 363 DO PASS AS AMENDED.

Motion: SEN. O'NEIL made a conceptual amendment to place punitive damages on the second cause of action so punitive damages will remain the same as they are presently for the first lawsuit. This statute would come into effect on the filing of a second lawsuit in an effort to stop the punitive damages from stacking up. SEN. O'NEIL feels sometimes you have to have punitive damages be higher than three percent. It is unfair for the business to have punitive damages stack up. The first lawsuit should receive damages based on the assets of the business. Subsequent lawsuits should not receive punitive damages, however, since the business has already received punishment.

SEN. WHEAT responded asking SEN. O'NEIL to look at the existing punitive damage bill that says one of the categories the judge is supposed to look at in the event of a punitive damage award is previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act. Therefore, this is one of the categories the judge should look at, and it is already in law.

SEN. O'NEIL withdrew his amendment.

SEN. WHEAT stated he does not like this bill and stated there is no evidence showing settlements are being driven up. SEN. WHEAT feels there is a statute already in place that contains many,

many road blocks to a punitive damage award. A person would have to get over all the hurdles in place before receiving a punitive damages award. **SEN. WHEAT** trusts juries and judges to make the right decisions in these kinds of cases and does not believe we should be tinkering with this statute and setting arbitrary limitations and taking that decision away from juries and judges.

SEN. MCGEE stated his problem is not with the award itself, but is with the threat of that award being used in order to raise the bar of the settlement. He feels this is used as a hammer in settlement negotiations and feels SB 363 will reduce that threat.

Vote: The motion that **SB 363 DO PASS AS AMENDED** carried 5-4 by roll call vote.

EXECUTIVE ACTION ON SB 394

Motion/Vote: **SEN. PERRY** moved **SB 394 DO PASS**. The motion carried 5-4 by roll call vote.

Motion: **SEN. PERRY** moved **SB 394 BE RECONSIDERED**. The motion carried unanimously.

Motion: **SEN. PERRY** moved **amendment SB039401.ajm BE ADOPTED**.

Discussion: **SEN. PERRY** explained the amendment will insert the words "seeking to ensure fairness in litigation by" in the title of the bill.

Vote: The motion of **SEN. PERRY** that **SB039401.ajm BE ADOPTED** carried unanimously.

Motion: **SEN. PERRY** moved **SB 394 DO PASS AS AMENDED**.

Discussion:

SEN. PERRY brought to the Committee's attention that the hearing time and room had been changed at the last minute, and several persons who planned on testifying in favor of the bill were unable to attend the hearing. In particular, Mr. Raleigh Johnson, representing NFIB, as well as others who supported the bill, did not get a chance to testify.

Vote: The motion that **SB 394 DO PASS AS AMENDED** failed 4-5 by roll call vote.

Motion/Vote: SEN. GRIMES moved SB 394 BE INDEFINITELY POSTPONED. The motion carried 5-4 with Senators Curtiss, O'Neil, Perry, and McGee voting no.

EXECUTIVE ACTION ON SB 397

Motion: SEN. CURTISS moved SB 397 DO PASS.

Motion: SEN. O'NEIL proposed an amendment on page 1, line 14, after "limited" adding "land and" and then on the same line striking "property" and inserting "land". The sentence would then read (2) "Real Property" means, but is not limited to land and any structure built or located on the land, aggregate and other removable minerals, and any forest product or other crop grown on the land."

Vote: SEN. O'NEIL's motion that SB 397 BE AMENDED failed with Senators McGee and O'Neil voting aye.

Vote: SEN. CURTISS' motion that SB 397 DO PASS carried 5-4 by roll call vote.

ADJOURNMENT

Adjournment: 12:55 P.M.

SEN. DAN McGEE, Vice Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus38aad)